IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 28TH MARCH 2007 / 7TH CHAITHRA 1929

WP(C).No. 26127 of 2005(I)

PETITIONER:

SHEELA PAUL, AGED 36 YEARS,
W/O.MATHEW, LIBRARIAN, K.P.M.HIGHER SECONDARY
SCHOOL, CHERIYA VELINALLOOR, KOTTARAKKARA
691 516.

BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED BY ITS
SECRETARY TO GOVERNMENT, GENERAL EDUCATION
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF HIGHER SECONDARY
EDUCATION, HOUSING BOARD BUILDINGS,
TRIVANDRUM.

3. THE MANAGER,
K.P.M. HIGHER SECONDARY SCHOOL,
CHERIYA VELINALLOOR, KOTTARAKKARA 601 516.

R1 & R2 BY G.P. SHRI
R3 BY ADV. SRI.P.S.SIDHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/03/2007, ALONG WITH WPC NO. 6112 OF 2006 THE COURT ON 28/3/2007 DELIVERED THE FOLLOWING:

APPENDIX IN WPC 26127/05

EXT.P1-TRUE COPY OF APPOINTMENT ORDER OF THE PETITIONER DATED 16.7.2001

EXT.P2-TRUE COPY OF THE LETTER OF MANAGER DATED 17.7.2001

EXT.P3-TRUE COPY OF DECISION REPORTED IN 2005 (1) KLT 94

EXT.P4-TRUE COPY OF JUDGMENT IN WPC 24898/2003 DT.1.7.2004

EXT.P5-TRUE COPY OF GO DATED 6/7/2005

EXT.P6-TRUE COPY OF JUDGMENT IN WPC 33964/03 DT.11.7.2005

// TRUE COPY //

P.S. TO JUDGE

T.R. Ramachandran Nair, J.

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various schools. Thereafter, the Government during the coming years, have sanctioned the starting of various Higher Secondary schools after being satisfied about the infrastructural facilities including libraries. During the initial years, by various Government Orders, directions have been issued for appointment of teachers and for their approval. After the decision of the Honourable Supreme Court in M.M. Dolichan & others v. State of Kerala (AIR 2001 SC 216) separate rules were prescribed by the Government providing for method of appointment and qualifications for appointment of staff of Higher Secondary Schools. These rules are embodied in Chapter XXXII of the Kerala Education Rules. These rules were published in the Extra-ordinary Gazette dated 12.11.2001. The posts of Librarian Grade III and Librarian Grade IV are provided as categories 4 and 5 in Rule 3 of the Rules. The method of appointment for these two posts are also given under the Rules.

3. The case of the petitioners is that they have been duly appointed by the respective managements after a process of selection and even though the management has forwarded the proposal for appointment for approval to the second respondent, there was no response thereafter. Ultimately, they approached this court in Writ Petition Nos.24937/2005 & 10308/2005. Pursuant to the directions issued by this court, the matter was considered by

the Government resulting in the passing of the orders under challenge in these two writ petitions.

4. The apparent reason for rejecting the approval of appointment is that the post of Librarian has not been created by the Government in Higher Secondary schools and that appointment of Librarians as per the rules can be done only after Government sanctioned the creation of such post. The appointment of petitioners is against non-sanctioned posts and therefore the same cannot be approved.

5. The petitioners contend for the position that in all the schools the Higher Secondary courses have been sanctioned only after satisfying the infrastructural facilities including libraries and laboratories and therefore the appointment of Librarian is a must, as otherwise it would adversely affect the interest of the students. It is contended in the light of the decision of this court in **Shaji v. Ramachandran** (2003 (2) KLT 814) and the Full Bench decision reported in Aided **Higher Secondary School Teachers Association v. State of Kerala** (2005 (1) KLT 94 (FB)) and other decisions that the question of sanction does not arise at all and as the special rules create the post of Librarian, what remains is only the approval of appointment and hence the view taken by the Government in rejecting the

proposal are not correct. It is also pointed out that in a batch of cases, viz. O.P.No.10757/2003 and connected cases in regard to the post of Lab Attenders, similar issue was considered by a learned single judge of this court and directions have been issued in favour of the petitioners therein. Ext.P4 in Writ Petition No.26127/2005 is the common judgment in those writ petitions.

6. In the light of the contention that no separate sanction is required for the post of Librarian, the legal position has to be examined with reference to the rules and the judgments relied upon by the petitioners. The statutory rules governing the subject is included in Chapter XXXII of Kerala Education Rules. Rule 2 states that "the method of appointment and qualification of teachers and non-teaching staff in the aided Higher Secondary Schools in the State shall be as prescribed in this Chapter." Rule 3 provides that "the service of every aided Higher Secondary School shall consist of all or any of the following categories of posts as the Director may sanction." There are eight categories provided wherein category Nos.4 and 5 are Librarian Grade III and Librarian Grade IV. Going by Rule 3, the Director will have to sanction the particular category of posts in the school in question. It is argued on the basis of the decision of the Division Bench of this court in 2003 (2) KLT 814 that no separate sanction is required as

there is already creation of post of Librarian by the statutory rule itself. The Division Bench in the above case, was considering the same issue regarding the post of Principal. After considering rule 3, their Lordships held that "the post of Principal is a solitary post in Category No.1. Category Nos.2 and 3 relate to the appointment of Higher Secondary School teachers in two different scales. These relate to 39 subjects. Thus, the rule clearly provides that there shall be a Principal and teachers. So far as the sanction of the post is concerned, the Director has no discretion in the matter of office of the Principal. He can only make choice in respect of the other categories whereby he can lay down that there may be no teacher to teach the subjects like German, Latin, Russian languages or those in which the number of students is not adequate. However, it shall not be open to the Director to say that the school shall function without a Principal who alone can be the academic and administrative head." Their Lordships were considering the solitary post of Principal provided in category No.1 and had taken a view that since category No.1 concerns only the post of Principal, the Director has no discretion in the matter of office of the Principal. But as far as the post of Librarian is concerned, there are two categories, viz. Librarian Grade III and Librarian Grade IV covered by category Nos.4 and 5 respectively. Therefore, as far as the posts in a particular school is concerned, the

authority may have discretion to sanction either the post of Librarian Grade III in category No.4 or Librarian Grade IV in category No.5. It is not a case like that of a Principal. Hence, even though the rules provide for creation of the post of Librarian Grade III or Librarian Grade IV, since there is a discretion available, as held by the Division Bench, in the matter of appointment of teachers, I am of the view that the same is the position as far as the post of Librarian also. Hence, the contention that the rules automatically create the post and no separate sanction is required, is not correct. There are two categories of Librarians and hence even going by the decision in 2003 (2) KLT 814, it is upto the sanctioning authority to take a decision in accordance with the requirements of a particular school.

7. The decision of the Full Bench in 2005 (1) KLT 94 concerns the appointment of Principals in Higher Secondary schools. In paragraph 8 their Lordships of the Full Bench held that the post of Principal is compulsory in the Higher Secondary Schools, as without the head of the institution, it cannot function. Therefore, the Government was directed to give sanction and approval for the post. It is evident from the above decision also that the Full Bench was considering the question whether there was any discretion as regards the post of Principal is concerned. Their Lordships said that the said post is compulsory as per rules and classified as

category No.1. Hence the facts of the case referred by the Full Bench are different and the contention raised by the petitioners that the post of Librarians will also be covered by the dictum laid down by the Full Bench, does not appear to be correct.

8. Counsel for the petitioners further relied upon the decision of a Division Bench of this court in Writ Appeal No.66/2007 and connected cases. Those cases were also concerning the post of Principal. Referring to the decision of the Full Bench in paragraph 8 of the judgment, the Division Bench was of the view that what the Full Bench directed was to sanction post with a particular scale of pay or with special pay because the post of Principal which is compulsory for every institution categorised as No.1 in the Rules was already available. The circumstances herein are different.

9. In the judgment produced as Ext.P4 in Writ Petition No.26127/2005 the subject matter of the dispute related to the appointment of Lab Attenders (Lab Assistants in Higher Secondary Schools). After considering the matter in detail with reference to the Government Orders which were in force, this court disposed of the writ petitions directing the Government to take a final decision in the matter of approval of appointment to the post of Lab Attenders made by the aided Higher Secondary school managements, in the light of the various Govt. Orders

referred to in the judgment and also taking note of the approach made by the Government in the case of approval of appointment of teachers made as per executive orders prior to 14.11.2000. It is stated at the Bar that as regards the post of Lab Assistants are concerned, as per GO (MS) No.79/2003/G.Edn. dated 28.3.2003 sanction for creation of two posts of Lab Assistants in the scale of pay of Rs.2650-4150 in each Government and aided Higher Secondary schools has been granted.

10. It cannot be disputed by the respondents that the earlier circulars issued by the Government will justify the action of the managements in providing libraries in the schools concerned. Going by the circulars, as far as the liability of the management to provide infrastructure is concerned, library and laboratory facilities have been part of infrastructure to be compulsorily provided by the management for the purpose of granting permission to open the Higher Secondary schools. Therefore, the Government cannot take a stand now that it is optional and it is only a matter of discretion to allow or not to allow the post of Librarian. The history of the establishment of Higher Secondary schools will show that in the matter of appointment of teachers also various orders have been issued from time to time and pursuant to the judgment in AIR 2001 SC 216, the Government framed statutory rules. Going by the provisions of Chapter

XXXII, a school must have Librarian Grade III or Librarian Grade IV and the qualifications and method of recruitment have also been specified in the rules. It is evident that based on these stipulations the petitioners were appointed. The approach made in Ext.P5 in Writ Petition No.26127/2005 and in Ext.P12 in Writ Petition No.6112/2006 is that even though the post of Librarians are included in the special rules for Higher Secondary schools, no post of Librarian has been created so far in the Higher Secondary Section in the State. It is also stated that it is a policy matter to be decided by the Government taking into account various aspects including the financial liability involved. It is clear from the rules that the staff pattern is prescribed by the rules and the authority is given power to sanction various posts required for a particular school. The question is whether the authority can take a stand that no orders will be passed creating the particular post as a policy to avoid financial liability. When the minimum requirement of a school includes a Librarian, it cannot be disputed that it should be manned by properly qualified Librarians subject to the requirements of the school. It is therefore clear that the approach made in Exts.P5 and P12 in the respective writ petitions are not correct.

11. Therefore, the writ petitions are disposed of quashing Ext.P5 in Writ Petition No.26127/2005 and Ext.P12 in Writ Petition No.6112/2006.

The respondents are hereby directed to take a fresh decision in the matter in the light of the observations made above and in the light of the fact that apart from approval granted to the post of teachers, sanction and approval has been granted for appointments to the post of Lab Attenders in aided Higher Secondary Schools. The Librarians are also entitled for a similar treatment to that of teachers and Lab Attenders. Orders will be passed in the matter within a period of three months from the date of production of a copy of this judgment.

The writ petitions are disposed of accordingly.

(T.R. Ramachandran Nair, Judge.)

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